UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/51/392
23 September 1996
ENGLISH
ORIGINAL: ENGLISH/SPANISH

Fifty-first session
Agenda item 109

RIGHT OF PEOPLES TO SELF-DETERMINATION

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 50/138 of 21 December 1995, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

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Annex

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1 - 3	3
II.	ACTIVITIES OF THE SPECIAL RAPPORTEUR	4 - 14	3
	A. Implementation of the programme of activities	4 - 9	3
	B. Correspondence	10 - 14	5
III.	MERCENARY ACTIVITIES	15 - 38	8
	A. Current situation	15 - 25	8
	B. Need for a common approach in condemning mercenary activities	26 - 38	11
IV.	CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES	39 - 40	14
V.	CONCLUSIONS	41 - 48	15
VI.	RECOMMENDATIONS	49 - 54	16

I. INTRODUCTION

1. During its fiftieth session the General Assembly adopted resolution 50/138 on 21 December 1995 which, inter alia, urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government of any State or threaten the territorial integrity and political unity of sovereign States, or to promote secession or fight the national liberation movements struggling against colonial or other forms of alien domination or occupation. The Assembly called upon all States that had not yet done so to consider taking necessary action to sign or to ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, and urged them to cooperate with the Special Rapporteur in the fulfilment of his mandate.

2. The General Assembly reaffirmed that the use of mercenaries and their recruitment, financing and training are causes of grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations; requested the Centre for Human Rights of the Secretariat, as a matter of priority, to publicize the adverse effects of mercenary activities on the right to self-determination and, when requested where necessary, to render advisory services to States that were affected by the activities of mercenaries; and requested the Special Rapporteur to report, with specific recommendations, his findings on the new elements identified in the use of mercenaries to undermine the rights of peoples to self-determination to the General Assembly at its fifty-first session.

3. Pursuant to the provisions of the above-mentioned resolution, the Special Rapporteur has the honour to submit this report to the General Assembly for consideration. The report has been drawn up in accordance with the limit on the number of pages established.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

4. The Special Rapporteur travelled to Geneva on 25 March 1996 to submit his seventeenth report to the Commission on Human Rights (E/CN.4/1996/27). While in Geneva, the Special Rapporteur had consultations with representatives of various States and held meetings with members of non-governmental organizations.

5. The Special Rapporteur returned to Geneva on two occasions, from 28 to 31 May 1996 and 29 July to 5 August 1996, to participate in the third meeting of special rapporteurs and special representatives, independent experts and chairmen of working groups of the Commission on Human Rights, to hold a number of consultations and meetings and to draft this report.

6. Of particular importance during this period were the meetings which the Special Rapporteur had with Ambassador Jacob S. Selebi, Permanent Representative of South Africa to the United Nations Office at Geneva, on 26 March and 31 July 1996. The Special Rapporteur recalled that in a number of previous reports he had made reference to mercenary activities originating in South Africa whose purpose had been to perpetuate and reinforce the apartheid regime. That regime had been abrogated and dismantled and the country was now on the way to building a modern, multiparty and multiracial democracy. However, the Special Rapporteur had recently received reports that a private company registered in Pretoria as a security firm, Executive Outcomes and its subsidiaries, had allegedly been sending mercenaries to Angola and Sierra Leone under contracts concluded with the Governments of those countries in exchange for substantial cash payments and mining concessions. The directors of the conglomerate were said to be connected with former members of Battalion 32, which had fought in Angola under the name of Buffalo Battalion, and erstwhile members of racist and extreme right-wing paramilitary organizations. The Special Rapporteur expressed his interest in visiting South Africa on an official mission in order to investigate these allegations in situ.

7. Ambassador Selebi said that his Government was firmly opposed to any use of mercenaries, particularly in Africa. Mercenaries were being used in the context of domestic armed conflicts which, unfortunately, continued to take place in certain African countries. Although many aspects of mercenary activity were punishable under South African law, enforcement was difficult since the bulk of such activities took place abroad. New draft legislation was being considered. Regarding the allegation that a security firm or association of firms registered in South Africa was being hired by foreign Governments, he said that the terms agreed in such contracts were the responsibility of those Governments. He went on to say that he would inform his Government that the Special Rapporteur had expressed an interest in visiting South Africa. Subsequently, in a letter dated 24 June 1996, he transmitted his Government's official invitation to the Special Rapporteur to visit the country (see para. 12).

8. The Special Rapporteur also met on 27 March 1996 with Ambassador Mustafa Bijedić, Permanent Representative of the Republic of Bosnia and Herzegovina to the United Nations Office at Geneva. He recalled that he had received and examined allegations regarding the presence of mercenaries in the territory of the former Yugoslavia since the time of his tenth report (A/47/412), which had been submitted to the General Assembly at its forty-seventh session. At the invitation of the Governments of the Republic of Croatia and the Federal Republic of Yugoslavia he had visited both countries on an official mission in September 1994, however, he had been unable to visit Bosnia and Herzegovina. He considered it important to do so in order to look into allegations he had received regarding the presence of foreigners, mercenaries, volunteers and Islamic fighters or mujahidin in the armed conflicts which had recently ravaged that country.

9. Ambassador Bijedić said that no member of, or individual associated with, his country's armed forces could be described as a mercenary. Some years previously the Ministry of Defence had reported the presence of a certain number of foreigners, mainly volunteers, who served alongside the Fifth Army Corps and who subsequently left the country. His Government was prepared to continue

cooperating with the Special Rapporteur and would examine the latter's request to make an official visit. At the same time, it hoped that the Special Rapporteur would carry out his mandate in such a way as to help strengthen the democratic forces that were fighting to preserve the multi-ethnic and multicultural character of Bosnia and Herzegovina and to ensure that war criminals and those responsible for acts of genocide against the people of his country were brought to trial and punished.

B. Correspondence

10. In reply to a letter from the Special Rapporteur dated 12 November 1995, Mr. Nigel C. R. Williams, Ambassador and Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office at Geneva, sent the following letter, dated 31 January 1996, to the Special Rapporteur:

> "You ask for details about Executive Outcomes (EO) and its activities in Sierra Leone. We understand that it is a British and South African-registered security company. It has its British office in Alton, Hampshire. Branch Energy, a company affiliated to EO, has been contacted to work the Koidu diamond mines. Other EO-affiliated companies are Heritage Oil and Gas, GJW Government Relations, Capricorn Air and Ibis Airline. There are about 150 EO employees in Sierra Leone. But we know of no evidence that they are engaged in activities designed 'to spread terror among the civilian population'.
>
> "The Government of Sierra Leone has contracted Executive Outcomes to provide their army with assistance and training. We note that the United Nations Secretary-General's report on Sierra Leone of 21 November refers to the use by the Sierra Leonean Government of advisers to 'improve the fighting skills of its troops, instil discipline and upgrade command and control'. The details of contracts signed with foreign companies are, of course, a matter between the Sierra Leonean Government and them. Armed forces from Nigeria, Guinea and Ghana are also stationed in Sierra Leone.
>
> "The recruitment of mercenaries in the United Kingdom is only illegal in certain very limited cases (namely when British citizens would serve in the forces of a foreign State at war with another foreign State which is at peace with the United Kingdom). Legislation to give effect to the United Nations Convention on Mercenaries has been considered but, from a legal point of view, would be very difficult to implement."

11. Pursuant to General Assembly resolution 50/138, of 21 December 1995, the Special Rapporteur sent a communication on 10 June 1996, to all States Members of the Organization requesting the following:

(a) Information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries);

(b) Information available to their Government on participation by nationals of their country as mercenaries in committing acts against the sovereignty of other States, against the exercise of the right of other peoples to self-determination and in human rights violations;

(c) Information on the possible existence of mercenary activities in the territory of another country from which actions were carried out that affected or potentially affected the sovereignty of their country and the exercise of the right of their people to self-determination;

(d) Information on the possible existence of mercenary activities in committing internationally wrongful acts such as terrorist attacks, forming and supporting death squads, trafficking in and abduction of persons, drug trafficking, the arms traffic and contraband;

(e) Information on domestic legislation currently in force and on international treaties to which their country was a party, outlawing mercenary activities and the use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination, together with observations on their Government's position regarding the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly on 4 December 1989 (resolution 44/34);

(f) Suggestions which, in their Government's view, might be of use in enhancing the international treatment of the topic of the use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination;

(g) Information and views on the existence of security service companies offering their services to Governments in order to intervene in internal armed conflicts with the assistance of mercenarized military professionals, for the purpose of improving the military effectiveness of government forces, in exchange for cash benefits and shares in the country's investments and economic ventures.

12. On 24 June 1996 Mr. Jacob S. Selebi, Ambassador and Permanent Representative of South Africa to the United Nations Office at Geneva, sent a letter to the Special Rapporteur, which read as follows:

> "I have the honour to refer to your letter of 1 April 1996 regarding the possibility of your visiting South Africa and to inform you that the South African Government hereby wishes to extend an invitation to you to visit South Africa, in your capacity as Special Rapporteur on Mercenaries, at a mutually convenient time."

13. By means of a note verbale of 8 July 1996, the Permanent Mission of the Slovak Republic to the United Nations Office at Geneva replied to the Special Rapporteur's request for information as follows:

> "The legal system of the Slovak Republic and general binding legal regulations do not permit either existence of mercenary units on the territory of the Slovak Republic or any activities related to operation of

this type of armed forces abroad. Paragraph 115, subparagraph 1, of the Penal Code prohibits the service in foreign armed forces in the following ways: 'A citizen of the Slovak Republic who without permission serves in the armed forces of a foreign power or in a foreign armed corps, shall be sentenced to imprisonment for a period from 3 to 8 years'.

"The term 'armed forces of a foreign power' is defined as regular armed forces or légion étrangère.

"No activities related to recruitment into foreign armed forces or corps were registered on the territory of the Slovak Republic."

14. The Permanent Mission of Germany to the United Nations Office at Geneva, by means of a note verbale of 16 July 1996 replied to the Special Rapporteur's letter of 18 March 1996 as follows:

"It is correct that the two persons named in the note dated 18 March 1996 were both given life sentences by Memmingen Regional Court on 14 December 1995 for two instances of joint murder. The sentences do not yet have the force of law because both of the accused have filed appeals on points of law only against them. The criminal court (sitting with three professional and two lay judges) based the convictions on the following circumstances: At the times of the offences, the accused Mrachacz and Simang were members of 'Kasnizka Boijna' unit which was under the command of Mladen Naletilic, known as General Tuta (hereafter: General Tuta), Mrachacz since the beginning of 1992 and Simang since February 1993. Tuta had previously lived for several years as a Croatian exile in Germany.

"The accused Mrachacz was initially a mercenary, was promoted to 'captain' after being wounded and lastly received DM 500.00 in pay. His task was to prepare the recruitment of further mercenaries on whom General Tuta then took a decision. Otherwise, he only had the power to give orders inasfar as members of the troop were assigned to him to use certain weapons in specific cases.

"The accused Simang initially received DM 80.00 per month as a mercenary, later increased to DM 300.00 per month. While the accused Mrachacz, who spoke Croat, felt closer to the Croatian part of the troop, Simang felt himself to be the leader of the German-speaking group. In July 1993, the German-speaking group also included the Austrian nationals Harald Stefan Trupp and, from about 10 August 1993 onwards, Wolfgang Niederreiter. Both are on remand detention in Austria on suspicion of being accomplices to the crime against Constantin Bieske which is to be adjudicated here. The accused Mrachacz was in Sirokij-Brijek until the beginning of June 1995. After he had heard about the proceedings pending against him from Croatian agencies and from Freilassing border police, he decided to give himself up to the German authorities in the knowledge that an arrest warrant for murder had been issued against him. Having announced his intention, he flew from Split to Frankfurt on 5 July 1995. He was detained there and since then has been on remand detention without interruption on the basis of the warrant of arrest issued by Neu-Ulm Local Court dated 12 August 1994.

"The accused Simang left Bosnia in March 1994 and reached South Africa, where he was recruited as a mercenary for an underground movement. He was arrested in that country on suspicion of committing offences as well as because he did not have a residence permit, and on 2 August 1994 was deported by air to Germany after consultation with the German criminal prosecution authorities. He was arrested on arrival in Frankfurt on 3 August 1994 on the basis of an arrest warrant issued by Neu-Ulm Local Court dated 14 July 1994 and has been on remand detention since then.

"The two cases of murder concern the killing of a German of between 30 and 35 years of age who was applying for recruitment to the mercenary unit, and the killing of another German mercenary. The convictions were primarily based on the testimony of two criminal police officers who had accompanied the accused Simang to Germany with the approval of the South Africa authorities. During this flight, the accused Simang expressed himself voluntarily and without being asked by the police officers, who were recognizable as such. The accused Simang was then questioned by the police in Frankfurt am Main. The criminal police officer from the Federal Criminal Office who was present during the questioning and the investigating judge who carried out the questioning were also heard as witnesses at the main trial.

"With regard to the first killing, the accused Mrachacz submitted a full confession at the main trial, at which the accused Simang also at least admitted that he had been involved in the killing. With regard to the second killing, the accused did not admit participating or did not admit this in full. Because of the other evidence available, the court also found them guilty of joint murder in this case. The court further ascertained that the guilt of the accused Simang was particularly serious."

III. MERCENARY ACTIVITIES

A. Current situation

15. Serious armed conflicts occurring throughout the 1980s and at the present time have affected the lives of millions, their safety and their right to peace. A number of these conflicts were considered by the Special Rapporteur because of the active presence of mercenaries - persons of a nationality other than that of the parties to a conflict, who became involved in it under conditions that qualify a person as a mercenary, in accordance with article 47 of the 1977 Additional Protocol I to the Geneva Conventions of 1949.

16. In order to verify the allegations made regarding the presence of mercenaries in armed conflicts, the Special Rapporteur undertook several on-site missions. As indicated in the reports submitted to the General Assembly and the Commission on Human Rights, most of the allegations were confirmed. Information had been gathered from authorities, victims' families and non-governmental organizations, from investigations done by specialized agencies and the press, and by reviewing judicial documentation and ascertaining the open and public existence of organizations devoted to the recruitment of soldiers of fortune, that is, persons of military rank or persuasion disposed to serve as

mercenaries. The evidence was that armed conflicts arising in regions as disparate as southern Africa, Central America or the former Yugoslavia nevertheless had one common feature - contingents of mercenaries were invariably associated with the most vicious and bloody war actions.

17. The experience he has acquired over eight years prompts the Special Rapporteur to assert that situations involving, for example, armed conflict, terrorism, or violence linked to extremist intolerance foster a growing reliance on the use of mercenaries, which for our purposes means seeking out foreign experts who are paid for services of destructive violence and deadly effectiveness. The Special Rapporteur has maintained and continues to maintain that mercenaries exist; that they are not a small number of individuals; that they are groups of professionals selling their skill in war and violence; that they are also criminal organizations, an international blight in their perpetration of acts of violence which ruin human lives, create material losses, hamper economic activity and extend to terrorist attacks that have touched off or aggravated conflicts, with often catastrophic results for the peoples affected by them.

18. Criminal activities are relegated to mercenaries for various reasons: military professionalism; criminal experience; concealment of the real mastermind; greater safety in acting without directly assuming the consequences; the comparatively low cost, in money and endangerment of the lives of one's own military personnel, of recruiting mercenaries and so on. The reality is that there are people disposed to become mercenaries, and that ultimately they are so disposed because of the pay they receive for conducting illicit activities in a country other than their own. Their intervention is directly motivated by financial gain, although they disguise their conduct by making altruistic, ideological, patriotic or other kinds of claims.

19. Generally speaking, there are usually two circumstances that determine the actual use of mercenaries: on the one hand, the existence of a body, an organization, a State or a party to a conflict which, in order to carry out operations in pursuit of established goals that are illegal, resorts to engaging mercenaries as the way of accomplishing its criminal intent. On the other hand, there have to be organizations that recruit and people who, for high pay, will agree to serve as mercenaries in the knowledge that they will be performing injurious acts prohibited by the national laws and international treaties protecting human rights, State sovereignty and the right of peoples to self-determination. Thus, a criminal alliance is always established between recruiter and recruit.

20. The nature of the act remains the same, whether the mercenary agent performs his criminal activities on behalf of a particular Power or of a group that wishes to cause damage in another country. The fact remains that a criminal act has been committed by a mercenary, and this must unquestionably be considered an aggravating factor in judging both the agent and the recruiter. Moreover, the fact of resorting to engaging mercenaries shows the perversity of the aim being pursued: to conceal the identity of the mastermind; to give a false impression of the nature of the act; to achieve greater and more efficient cruelty in a crime committed on paid assignment; and to facilitate escape and impunity.

21. In this connection, the Special Rapporteur has observed in his previous reports that it should not be surprising when false leads are set and false identities are assumed to avoid classification as a mercenary. In some cases, legal devices are used to conceal the nature of the assignment or to make the mercenary appear to be a national of the country in whose armed conflict he is involved. Yet such masquerading is only a disguise to hide the mercenary's true status. When there are accusations and a justifiable suspicion that criminal acts have been perpetrated by mercenaries, the investigation into the real identity and nationality of a person should establish how long ago and under what circumstances the new nationality was granted, whether there is a contractual relationship and what payment and other benefits have been agreed upon, whether other nationalities and passports have been used simultaneously, and so on.

22. Mercenaries ordinarily do not admit that this is what they are. They themselves are not immune from the universal feeling of revulsion against mercenaries as being in the dirtiest profession. They resort to various arguments and legal niceties to deny their status. Yet there are always signs and leads that must be followed to establish the real status of persons justifiably suspected of being mercenaries. The issue of mercenary activity has so many ramifications nowadays that attention must focus on the matter of nationality as a means of differentiation and a determining factor in deciding whether an act that impedes the enjoyment of human rights and the self-determination of a people is a mercenary act. Indeed, a foreign Power can avail itself of nationals of another country to do serious harm to that country or its Government. In a case of this sort, the rules of international law as they now stand would not allow the act to be defined as mercenary, even if there was evidence of recruitment and payment. The matter would have to be prosecuted as an offense under the provisions of ordinary penal law in the country in question. Nevertheless, although there are inadequacies and gaps in the existing international law and the interpretation of some of its provisions is too difficult to apply for the purpose of defining mercenary acts, it would be wrong to invoke the existing rules as justifying mercenary acts and behaviour.

23. Without obviating the need to clarify, refine and expand the rules of international customary and treaty law to combat mercenary activity, it should be established as a principle that in essence the aim of such rules is to condemn a mercenary act as the buying and selling of criminal services in order to interfere with the enjoyment of human rights, sovereignty or the self-determination of peoples; and that there is international jurisprudence condemning interference by one State, not to speak of an individual organization, in the internal affairs of another State and in the lives of its people. It is an aggravating factor if nationals of the latter country are employed for that purpose; such nationals would not strictly speaking be considered mercenaries, but, on the part of those recruiting them, the aim of using them as mercenaries is objectively undeniable.

24. Consequently, in his previous report to the General Assembly (A/50/390, para. 28), the Special Rapporteur indicated that illicit activities in which nationality is used to mask their mercenary nature by a Power that recruits, prepares and pays an individual to perpetrate a criminal act against another country, its Government, its property or a given sector of its population should

be analysed and debated with a view to revising current international provisions on the subject. Since the General Assembly has repeatedly condemned mercenary activities, as have other United Nations organs such as the Economic and Social Council and the Commission on Human Rights, and since in addition Member States have condemned such activities and some countries have national laws making the use of mercenaries a crime, a case can be made for the existence of an international customary law that rejects, condemns and prohibits mercenary activity.

25. However, in the very next breath, it must be added that the persistence of such acts, the range and variety of the forms in which they are carried out, the intrigues and covert operations engaged in by intelligence services, the recruitment of mercenaries for acts of terrorism, or the employment of nationals of a country by third States in order to harm that country, its Government or a given sector of its population or territory, in practice making mercenaries of those nationals, all prove that the international community and the peoples of the world are not adequately protected against the manifold use of mercenaries. It would therefore be proper to revise the existing legal texts and find criteria that in this respect best reinforce the observance of human rights, State sovereignty and the self-determination of peoples.

B. Need for a common approach to condemnation of mercenary activities

26. Based on information he has received, the cases he has reviewed and the experience he has acquired, it is the Special Rapporteur's firm conviction that the relevant international legal instruments are but imperfect tools for dealing with the issue of mercenaries. There are difficulties in applying article 47 of Additional Protocol I to the Geneva Conventions of 1949 to various cases of mercenary activities; mercenary activities are not characterized as an offence under the domestic penal law of many countries, and, although nearly seven years have elapsed since its adoption by the General Assembly, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has yet to enter into force since barely 10 countries have ratified or acceded to it.

27. The vacuum that exists at the level of treaty law, the inadequacy of existing norms and uncertainty regarding their legal interpretation have combined to create loopholes, thereby giving mercenary activities the appearance of being within the law. The Special Rapporteur noted in paragraph 33 of his latest report to the Commission on Human Rights (E/CN.4/1996/27) that some countries tolerate the existence of associations registered as security services companies which offer contracts freely to people who want to work as mercenaries, without the act of promoting, advertising or signing such a contract being regarded per se as illegal and subject to prosecution.

28. In these cases, the legal loophole is that the law guarantees that the market may operate freely and that people may be recruited freely. The person who recruits a potential mercenary is simply an intermediary and is not committing an act that is criminal per se. In such a case, it will be difficult to prove that the person hired will receive money to commit a crime and, in any

case, the criminal act would be committed in a third country. It is common knowledge that organizations that offer employment to adventurers who agree to hire out their services as mercenaries exist in many countries. The international community should therefore endeavour to develop detailed information and a regulatory capacity over market activities related to the recruitment of persons for unspecified activities which it has reason to believe constitute a traffic intended to commit criminal damage in a territory other than the one in which the contract was made and jeopardizes the sovereignty of a third State, peoples' lives, the economy and self-determination.

29. Obviously, it serves little or no purpose to unduly extend the term mercenary and to use it to discredit an adversary morally and politically. However, the duty to use the term with circumspection should not lead to the argument that no one is a mercenary. In the face of situations that jeopardize the enjoyment of human rights and self-determination and that concern acts such as criminal behaviour, payment, involvement in an armed conflict or in a terrorist attack on behalf of a third party, those affected and the entire international community inevitably wonder whether mercenaries are not behind it all. If that is the case, such acts must be deemed illegal and deserving of punishment.

30. In the same vein, I must emphasize the importance of some questions to which so far no definitive answers have been given and on which, in my view, the relevant United Nations bodies must take a stand: what is the status of a foreigner who enters a country and acquires its nationality to conceal the fact that he is a mercenary since his criminal act is for a third State or the other side in an armed conflict? What is the status of a non-resident national who is paid by a third State to carry out military and criminal activities against his own country of origin? What steps should be taken against a person of dual nationality, one of which is that of the State against which he is acting, while he is being paid by the State of his other nationality or by a third party? What are the limits of jus sanguinis in an armed conflict when it is invoked by persons who are paid and sent to fight in a domestic or international armed conflict taking place in the country of their forebears?

31. Thus far, the international community has not given any clear, unequivocal and uniform answer to any of these questions which are used to disguise a person's mercenary status. It is regrettable, in this regard, that the General Assembly repeated recommendations for the convening of a meeting of experts to further consider the issue of mercenaries and dual and multiple nationality and to make proposals to provide a clearer legal definition in order to assist in the prevention and punishment of mercenary activities, have not been taken up as yet owing to lack of financial resources. The continued failure to adopt criteria to promote a common and strong position against mercenary activities, clearly encourages the existence of mercenaries and their activities despite isolated action taken by individual countries.

32. Indeed, sentences such as those handed down by the regional court of Memmingen, Germany, on 14 December 1995, make it very clear that there are nationals of third parties who decide to offer their services as mercenaries and are actually paid to take part in armed conflicts as mercenaries (see para. 14). They also make it clear that mercenaries participate in criminal activities; the

sentences which the two German mercenaries received - and against which an appeal has already been lodged - therefore appears perfectly justified. It is likely that in the course of its work, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, sitting at The Hague, will hear cases of foreign mercenaries who have participated in the genocidal massacres that were perpetrated during the war in that country. But what should be done when it becomes apparent that, in some quarters of the international community, mercenary activities are no longer regarded as activities to be rejected, condemned and outlawed? The Special Rapporteur has pointed out that certain Governments - including the Government of Angola, a country which suffered repeated attacks by bands of mercenaries - are reported to have entered into contracts with Executive Outcomes, a company registered in South Africa, whereby the latter undertakes to provide protection and internal security, using mercenaries recruited mainly in South Africa and the United Kingdom, in return for a share in the profits derived from the exploitation of the country's natural resources.

33. In Sierra Leone, that same company is reported to have signed contracts with the former National Provisional Ruling Council (NPRC) Government to provide it with military support in the form of specially trained mercenaries and weapons. Five hundred mercenaries from various countries are alleged to be operating in Sierra Leone in exchange for cash payments and mining concessions for the contracting company. The scale of those operations will, of course, have to be verified, as will the true nature of the company and its affiliates and the attitude adopted by certain African Governments.

34. Mercenaries were a scourge and one of the worst blights on the nations of Africa in their brave struggle against colonialism and neo-colonialism, for self-determination for their peoples, and for the right to stable, effective and democratic government. Can it be that the mercenaries' behaviour is changing so profoundly that they now constitute the rank and file of the personnel recruited by a private company in order to contract with African Governments to provide internal security services, safeguard public order, or even to put an end to internal armed conflicts? If such contracts are, indeed, being concluded, the Governments signing them must be doing so on the basis of a sovereign decision; but is not responsibility for a country's internal order and security an inalienable obligation that a State fulfils through its police and armed forces? Is it not a grave infringement of that State's sovereignty to hand over such responsibilities to companies registered in third countries which sell security services staffed by foreigners, presumably mercenaries, who are recruited for operations in countries with which the company has signed contracts? Who will be responsible for any repressive excesses that the security companies may commit against the civilian population, especially where representatives of the political opposition are concerned? Who will take responsibility for any violations of international humanitarian law and of human rights that they may commit?

35. Finally, if our suspicions regarding the nature of these companies which sell security in return for investments in or profits from natural resources prove justified, does the international community consider as lawful the existence of a free market in commercial security operations, if, in practical

terms, that means that paramilitary forces which incorporate mercenaries can be expected to intervene in a country's internal affairs? What will be the human rights consequences of entrusting internal order and control over the exercise of civil rights in a country to an international private security firm? Would the international community be willing to accept and concur with the idea that the recruitment of mercenaries is illegal only in a few very limited cases? When, and in what circumstances, should the recruitment of mercenaries be considered legal?

36. The Special Rapporteur should therefore point out that attitudes towards the mercenary issue, which, it should be noted, has been condemned strongly and repeatedly by the United Nations, particularly by the General Assembly, would appear to be changing. In any case, the Special Rapporteur has raised questions and issues which need to be resolved in the light of improved knowledge of the facts and specific reports and following a systematic analysis that will produce suggestions and proposals for the adoption of political, legal and operational criteria concerning mercenary activities.

37. The Special Rapporteur trusts that during his forthcoming visit to South Africa, at the invitation of that country's Government, he will be able to take the opportunity to develop and systematize his approach to the question of mercenaries in the light of the issues and working hypotheses discussed in this report. It is well known that during the apartheid years, South Africa was a base for many mercenary operations. Later, some mercenaries established ties with paramilitary forces of the resistance groups and extreme right-wing groups, while others are said to be operating in other countries; finally, the company which reportedly serves as a model for companies offering, on the worldwide free market, security services which hitherto were the exclusive responsibility of the internal security forces of each State is registered in South Africa. This issue must be carefully considered in order to reach objective and reliable conclusions.

38. Mercenary activities are not only continuing but they are reported to be evolving and acquiring characteristics that make them far more of a threat to the enjoyment of human rights and the right of peoples to self-determination.

IV. CURRENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

39. By resolution 44/34 of 4 December 1989, the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. In accordance with article 19, the International Convention is to enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General. At the time this report was written, only 10 States had completed the process of expressing their willingness to be bound by the International Convention (Barbados, Cameroon, Cyprus, Georgia, Italy, Maldives, Seychelles, Suriname, Togo and Ukraine). The following 11 States have signed it: Angola, Belarus, Congo, Germany, Morocco, Nigeria, Poland, Romania, Uruguay, Yugoslavia and Zaire.

40. The International Convention confirms the judicial nature of the resolutions and declarations of United Nations bodies condemning mercenary activities, and expands international regulation of the question, such regulation being at present essentially limited to article 47 of the 1977 Additional Protocol I to the Geneva Conventions of 1949 and the 1977 Organization of African Unity Convention for the Elimination of Mercenarism in Africa. Its entry into force will contribute to the precise characterization of situations involving mercenaries, the effective prosecution and punishment of offenders, the clear determination of jurisdiction in each case, and to facilitating extradition procedures and preventive cooperation among States.

V. CONCLUSIONS

41. The Special Rapporteur's analysis of various situations of violence in the world which occurred during the 1980s and the 1990s confirms that mercenaries tend to be present mainly in armed conflicts, where they offer their services to one or more parties to the conflict in exchange for payment, seriously impairing the enjoyment of human rights and the exercise of the right to self-determination by the people who are victims of their actions.

42. It is also true that mercenary activities have persisted, despite repeated condemnations by the General Assembly, the Economic and Social Council and the Commission on Human Rights, regional organizations, States and non-governmental organizations. Going beyond the initial scope of the mandate, it was even possible to detect an expansion in mercenary activities, and it was observed that mercenaries commit serious crimes, such as terrorist attacks and drug and arms trafficking. Various events during the past year, of which the coup d'état in the Islamic Federal Republic of the Comoros was perhaps the most glaring, demonstrated the impunity enjoyed by mercenaries in practice and the ease with which they can commit acts that violate human rights and the right of peoples to self-determination.

43. The Special Rapporteur has noted in previous years situations which amounted to terrorist attacks with vast international repercussions where, according to the evidence gathered, highly specialized terrorist rings had been hired to blow up aircraft, mine ports, destroy buildings and industrial complexes, assassinate persons, etc. While in many cases the terrorist agent comes from fanatic groups espousing extremist ideologies, it must be remembered that terrorism is also a criminal activity in which mercenaries participate in exchange for payment, disregarding the most basic considerations of respect for human life and a country's legal order and security.

44. Because mercenary activities and the conduct of the mercenary himself can seriously impair the enjoyment of human rights, the self-determination of peoples, the stability of constitutionally established governments and international peace and security, mercenary activities and the mercenary career must be clearly and unequivocally banned. To suggest that some mercenary activities are illegal and others are legal is to make a dangerous distinction which could affect international relations of peace and respect among States.

45. Admittedly, in their current state, international norms concerning mercenaries are inadequate and ambiguous as regards their interpretation and application. This situation is compounded by the lacunae that exist in the national legislation of most countries, which do not characterize mercenarism as a separate crime, and by the fact that there are no extradition agreements guaranteeing punishment in all cases, thereby facilitating the perpetration of criminal acts and, very often, their impunity.

46. Despite the fact that seven years have elapsed since its adoption by the General Assembly, the International Convention against the Recruitment, Use, Financing and Training of Mercenaries has been ratified by only 10 countries. The delay in its entry into force clearly encourages the continuation of this criminal activity.

47. Certain developments that have taken place in Africa in recent years and that are still being investigated by the Special Rapporteur, suggest that mercenary activities not only persist but that they are undergoing a transformation. The establishment of the first firm devoted to selling security services to countries, mainly in exchange for concessions relating to mining and energy, is a sign that mercenaries are probably being recruited to help the law enforcement and public security forces to combat armed opposition movements and carry out tasks that are the responsibility of the police force. Once a greater degree of security has been attained, the firm apparently begins to exploit the concessions it has received by setting up a number of associates and affiliates which engage in such varying activities as air transport, road building, and import and export, thereby acquiring a significant, if not hegemonic, presence in the economic life of the country in which it is operating.

48. While the characteristics of the type of enterprise described in the preceding paragraph have been confirmed and its model is becoming widespread, the concept of security which the international community has had until now and the responsibility of each State to be accountable for and to guarantee, through its police forces, that each individual is able to exercise his rights and freedoms as a citizen, would seem to have been superseded by a new concept. According to this new concept it would appear that any State is at liberty to buy security services on the international market from organizations composed of persons of various nationalities, united by their function and their ability to control, punish and impose the order desired by the Government which hires them, regardless of the cost in lives, in exchange for the delivery of a portion of its natural resources to the security firm hired. Naturally, if this hypothesis is confirmed, mercenarism would no longer be considered as necessarily illicit, illegitimate or illegal; however, concepts such as that of State sovereignty and the obligations of States to respect and guarantee the enjoyment of human rights would be tremendously relativized.

VI. RECOMMENDATIONS

49. Considering that mercenary activities have increased, that they have become diversified, that they seem to be undergoing a transformation and to be acquiring characteristics that make them far more of a threat to the enjoyment of human rights, the General Assembly should reaffirm its condemnation of these

activities and, additionally, suggest to all States that they incorporate practical measures in their national legislation to prohibit the use of their territory for the recruitment, training, assembly, transit, financing and use of mercenaries.

50. The international community must take into account the connection existing between terrorism and mercenarism and the participation of mercenaries in criminal acts of a terrorist nature. Commissions, working groups and studies designed to prevent and punish terrorism should include the dimension of mercenarism in their analyses and conclusions.

51. The fact that some States consider that the recruitment of mercenaries is not necessarily illegal - in other words, that they consider it at times legal - is a grave danger to the united front which the international community must present in order to counter mercenary activities. It is therefore recommended that this dangerous line of thinking should be abandoned and that mercenary activities should be considered as a whole and be condemned, banned and characterized as illegal.

52. In view of the harm which the delay in the entry into force of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries is causing at the regulatory level, it is recommended that the General Assembly appeal to the States to be understanding so that they may move to ratify or accede to the Convention in order that it may enter into force speedily, without prejudice to the possibility of amending it at a future date.

53. Should certain trends persist, as seen in the conduct of some mercenary rings operating in Africa which are attempting to establish legally registered companies that will provide security services and invest in various sectors, a situation could arise in which mercenary armies, legally protected by contracts signed between the company employing them and the hiring State, would be carrying out police, law enforcement and punishment functions. If this trend is confirmed, the concept of security and the nature of international relations based on the principle of State sovereignty which have characterized the twentieth century would be greatly altered. It is therefore recommended that the General Assembly monitor closely the conditions in which some States agree to sign contracts with such enterprises. In the final analysis, the international community will have to take a position with regard to the possibility that, in future, States will depend for their security and law enforcement, on the activities of specialized enterprises.

54. In view of the circumstances described above, the General Assembly should reaffirm its recommendation regarding the convening of a meeting of experts to take a thorough look at the question of mercenaries and dual and multiple nationality and to formulate proposals for more effective legal clarification to prevent and punish mercenary activities; the publicizing - through, for example, the fact sheets issued by the Centre for Human Rights - of the impact that mercenary activities may have on the right to self-determination; and the provision of technical assistance services to States affected by mercenary activities, at their request.